

FILED '08 NOV 21 13:55 USDC-ORP

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN CLARK MILLER,

Plaintiff,

Civil No. 08-285-SU

v.

ORDER

NEW DIRECTIONS NORTHWEST,
INC., an Oregon non-profit
corporation,

Defendant.

HAGGERTY, Chief Judge:

Magistrate Judge Sullivan issued a Findings and Recommendation [20] recommending that plaintiff's Motion to Remand should be granted. Objections to portions of the Findings and Recommendation were filed by defendant. The matter was then referred to this court for review.

When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Defendant filed objections in a timely manner. The court has given

the file of this case a *de novo* review, and has also carefully evaluated the Magistrate's Findings and Recommendations, defendant's objections, and the Record of the case.

ANALYSIS

Plaintiff brought this action against defendant alleging that he was discharged for reporting concerns related to (1) the falsification of clients' medical records; (2) the arbitrary removal of clients from state treatment programs; (3) his employer's failure to protect client confidentiality, and (4) false billing. Plaintiff filed his action in Baker County Circuit Court, alleging he was terminated in retaliation for reporting violations of the state and federal constitutional rights to be free from religious teaching and coercion.

Defendant removed the action to federal court, claiming federal question jurisdiction. Plaintiff moved for remand. The Findings and Recommendation concluded that this motion should be granted because plaintiff's wrongful termination claim may stand alone without resolving a federal issue, and federal law is not a necessary element of plaintiff's claims.

The facts of the case, and the legal standards that are applicable to the remand motion, are presented thoroughly in the sound Findings and Recommendation, and need not be repeated. Defendant objects to the recommendation to grant remand on grounds that federal law is a necessary element to plaintiff's claims. Obj. at 2. Defendant contends that Oregon law does not espouse any relevant public policy "concerning physical facilities" upon which plaintiff's claims rely, but that federal law does. *Id.* at 3-4. Therefore, defendant asserts, federal law is a necessary element to plaintiff's claims and federal jurisdiction is proper.

These objections are overruled. While it is true that the state and federal laws that address the public policy concerns relevant to plaintiff's claims are not identical (or, as defendant asserts, co-extensive), defendant's invocation of federal as a purported basis for compelling

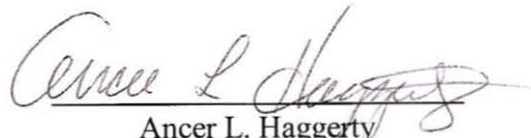
federal jurisdiction is unavailing. Plaintiff has adequately invoked state law that serves essentially the same purpose. *See Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 345 (9th Cir. 1996). This court agrees with the reasoning presented in the Findings and Recommendation that the "Oregon common law doctrine as expressed by the Oregon Constitution and statutes" that plaintiff relies upon is "intended to protect the rights of people undergoing medical treatment." Findings and Recommendation at 7. Accordingly, "[w]hether the alleged violation of laws that [plaintiff] was allegedly discharged for reporting are state or federal, no federal question is implicated." *Id.*

CONCLUSION

This court has undertaken a *de novo* review of the record of this case. For the reasons provided herein, the Findings and Recommendation [20] is ADOPTED. Plaintiff's Motion to Remand [6] is granted.

IT IS SO ORDERED.

Dated this 21 day of November, 2008.


Ancer L. Haggerty
United States District Judge